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ATLANTA GA 30309-4530

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OFFICE OF PETITIONS

In re Patent No. 7,822,428
Issued: October 26, 2010
Application No. 10/791,298
Filed: March 1, 2004
Attorney Docket No. 58083/374981

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: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
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This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED ON PATENT PURSUANT TO 37 C.F.R. 1.705 (d) filed on February 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 1538 days to 1774 days.

The request for review of the patent term adjustment is **DISMISSED**.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on March 1, 2007 and ends on May 11, 2010, the day before the RCE was filed, the B delay would be 1167 days. See 35 U.S.C. 154(b)(1)(B)(i). However, patentee fails to take into account that Notices of Appeal were filed March 28, 2008, October 23, 2008 and February 15, 2010. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 363 days, beginning on March 28, 2008 and ending on August 6, 2008, beginning on October 23, 2008 and ending on March 18, 2009, beginning on February 15, 2010 and ending on May 12, 2010. The time for appellate review is excluded (1167-363); thus the "B delay is 804 days. See 35 U.S.C. § 154(b)(1)(B)(ii). Additionally, the Office has determined that there is no overlap. As such, the patent term adjustment is 1538 days (796 "A delay days" + 804 "B delay days" - 62 Applicant delay days), not 1774 days.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

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